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March 27, 1999

## VIA TELECOPY & REGULAR MAIL

Muthu Sundram, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region II  
290 Broadway, 17th Floor  
New York, New York 10007-1866

MAR 31 1999  
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**Re: Praxair, Inc; LCP Chemical Site, Linden, NJ**

Dear Muthu:

Thank you once again for meeting with us on March 25 to discuss the above-referenced site. In our view, the meeting was productive: It provided the opportunity for Praxair to underscore and clarify certain points made by Richard Tisch in his letter of March 9, 1999, as well as to provide additional information requested by you and Del Karlen during our discussions. We trust that the information conveyed will assist EPA in reaching the only fair and reasonable decision with respect to Praxair's involvement in the upcoming CERCLA proceedings, *i.e.*, that EPA should not seek Praxair's participation in the Remedial Investigation/Feasibility Study (RI/FS).

As you know, Praxair has been neither an owner nor an operator at the LCP site since before the site achieved NPL status. Also, the only property on which Praxair previously operated has been remediated under state oversight, and the New Jersey Department of Environmental Protection (DEP) issued Praxair a "No Further Action" letter (NFA). Historical fill remains, but because that fill was emplaced long before Praxair occupied the premises, Praxair is not responsible for it under CERCLA or applicable state authority. Any releases that occurred during Praxair's use and occupancy have been remediated. Therefore, Praxair is not liable under section 107 of CERCLA, and no order should issue to Praxair.

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There is sufficient information in the record, including the data and reports provided to you at the March 25 meeting, for EPA to reach that conclusion. For example, the analytical results for mercury - the contaminant of concern - are all well below the state's non-residential cleanup level (270 mg/kg). Moreover, virtually all of the samples are below the residential cleanup level (14 mg/kg). Based on EPA's own recent policy and guidance, there is no reason to open yet another investigation with respect to mercury, as any reasonably foreseeable future use of this site would be industrial, or non-residential.

We encourage EPA to determine that the former Praxair leasehold should be excluded from CERCLA response action. To effectuate that result, EPA could initiate a regulatory proceeding to redefine the Superfund site to exclude that parcel. Alternatively, EPA could make an administrative determination, which could be embodied in a formal document, that takes cognizance of the fact of the prior investigations and remediations and declares the parcel to be free and clear of further response actions absent the receipt of new information. EPA also could decide not to pursue additional response actions, and simply not conduct further work on the property.

Regardless of the procedure, though, and even if EPA were to determine that the property requires further attention, EPA should not be looking to Praxair to perform an RI/FS or any portion thereof, and, therefore, no order should issue to Praxair. This conclusion also is warranted as a matter of deference to the state, as provided by recent EPA policy pronouncements. See, e.g., "Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities"; Memorandum from Steven A. Herman, OECA, and Elliott P. Laws, OSWER, to RCRA/CERCLA National Policy Managers, Regions I-X, September 24, 1996.

We also wish to use this opportunity to clarify a statement made at page 5 of Mr. Tisch's March 9 letter. Virtually 100 percent of the projected cost to remediate (unnecessarily) to residential standards would have been attributable to excavation of the contaminated fill material deposited by GAF. The 80%/20% breakdown was based on the actual cost to excavate (80%) vs. the cost for clean fill plus equipment, labor and materials. Please see Attachment 6 to the March 9 letter.

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Please do not hesitate to telephone me at the above number if you have any additional questions or concerns. Praxair looks forward to EPA's response.

Very truly yours,

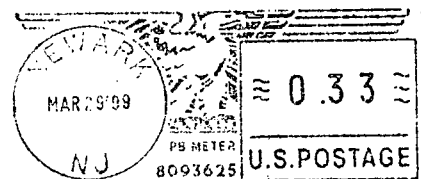
A handwritten signature in black ink, appearing to read 'LW Diamond', with a large, stylized loop at the end.

Lawrence W. Diamond  
for DUANE, MORRIS & HECKSCHER LLP  
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LWD:reh  
cc: Delmar Karlen, Esq.  
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